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STATEMENT OF BOB FOOSE, EXECUTIVE DIRECTOR
OF THE MAJOR LEAGUE SOCCER PLAYERS UNION
TO THE HOUSE JUDICIARY COMMITTEE
REGARDING H.B. 5964

Chairman Meadows and members of the Judiciary Committee, my name is Bob Foose, and I am the Executive Director of the Major League Soccer Players Union. The Players Union is the exclusive collective bargaining representative of all current and future players in Major League Soccer. On behalf of our 410 members, I am writing to express our strong concerns with Michigan House Bill 5964. As currently drafted, the legislation would have a direct impact not only on the rights of professional soccer players, but anyone who currently is protected by Michigan's common law right of publicity. It is a protection that should be preserved not diminished.

Today, it is well settled that in Michigan the commercial exploitation of an individual's identity is prohibited unless he or she grants permission. *See e.g., Pallas v Crowley, Milner & Co*, 322 Mich 411, 33 N.W.2d 911 (1948); *Carson v Here's Johnny Portable Toilets, Inc*, 698 F.2d 831, 834 (6th Cir 1983). More importantly, the courts have applied the right broadly. To be successful, one only needs to prove there is a pecuniary interest in one's identity and that the defendant has commercially exploited it without permission. *Hauf v Life Extension Foundation*, 547 F. Supp. 2d 771, 778 (W.D. Mich 2008); *Battaglieri v Mackinac Center for Public Policy*, 261 Mich App 296, 301, 680 N.W.2d 915 (2004).

Unfortunately, the legislation, as currently drafted, would create a drastically different standard. Under the bill, the determinative issue would no longer be whether there was exploitation but instead, what was the type of exploitation that occurred. The legislation provides a lengthy list of permissible activities, ranging from the unauthorized use of an individual's identity in a video game to the unauthorized use in almost every

known media. In fact, it would appear that the only aspect of the right of publicity left intact would be the prohibition against an individual's name being used without permission in an advertisement or sponsorship. Of course, this prohibition is guaranteed under federal law in the Lanham Act.

Not only is the bill's formulation inconsistent with current law, it is unfair to the one individual whose interests should be paramount – the person being exploited. Oddly, the legislation would put the interests of the commercial enterprise hoping to profit from the unauthorized use of another's identity above the interests of the victim. It is a formulation that seems contrary not only to common law but to common sense, because it would give someone else a greater right to an individual's name and identity than the individual.

Michigan has produced some of the nation's most elite athletes. Soccer is no exception. For example, Alexi Lalas was born in Birmingham. Cobi Jones was born in Detroit. Both men had long, storied careers that spanned not only decades but continents. Their ability to control how their names, images, careers, and reputations are used by others without permission should not depend on where they were born or where they choose to live.

Today, with the growth of the Internet and the elimination of most traditional barriers to communication, the ability to protect one's identity is in jeopardy. With twenty-four hour news cycles, blogs, instantaneous websites, and live streaming media increasingly undermining the ability to protect not only one's name but the truth, this is not the time to marginalize one of the few privacy protections left - the right of those who have gained notice through hard work, demonstrated excellence, or a lifetime of achievement to prevent their likenesses and reputations from being exploited without consent.

The MLS Players Union respectfully asks that the Committee not approve House Bill 5964 as currently drafted. The bill represents a major curtailment of the existing

right of publicity for anyone in Michigan, athlete or not, whose celebrity has made their name, image and reputation commercially exploitable.